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O.A.NO. 62 of 2007

Order dated ~~28th~~ ^{June} ~~May~~ 2007

Assailing the impugned order dated 8.1.2007 vide Annexure-4 transferring him from Bhubaneswar to Raipur, the applicant has approached this Tribunal in this O.A. seeking the following relief and interim relief:

"6. RELIEF(S) SOUGHT

In view of the facts discussed in the foregoing paragraphs, the applicant prays for the following reliefs:

- (i) This Tribunal be graciously pleased to allow the application and quash the order dated 8th January, 2007 (Annexure-4).
- (ii) This Tribunal be graciously pleased to allow the application and give a direction to the Respondents for allowing the applicant to stay in his present station, i.e., ISPW station, Bhubaneswar.
- (iii) And to pass any other appropriate direction/order as this Hon'ble Tribunal deems fit and proper to which the applicant is entitled to.

7. INTERIM ORDER IF PRAYED FOR

That the applicant humbly prays that an interim order be passed in staying the order of transfer dated 8th January, 2007 (Annexure-4) passed by the Respondent No.2 and for this act of kindness the applicant as in duty bound shall ever pray."

2. The Tribunal by order dated 21.02.2007 directed issuance of notices to the Respondents and passed interim order staying operation of Annexure-4. The notice along with the copy of the order dated 21.02.2007 was directed to be served on Respondent No.3 through special messenger at the cost of the applicant and the notices to other respondents were issued by Registered Post. In the notices, the Respondents were directed to show cause as to why the application should not be admitted, or why it should not be disposed of at the stage of admission itself, and if admitted, why it should not be disposed of at the subsequent stage without any further notice. It was further indicated in the notice that in order to contest the application, the Respondents might file their reply along with the documents in support thereof and after serving a copy of the same on the applicant or his legal practitioner by 06.03.2007 and appear before the Tribunal either in person or through a legal practitioner/presenting

[Signature]

officer appointed by them in this behalf along with the relevant records, failing which the application would be heard and disposed of in their absence without any further notice to them. The learned Sr.CGSC, entered appearance for the Respondents, by filing a Memo of Appearance which is not as per Form 11. The Respondents, without filing counter, filed M.A.No.165 of 2007 on 5.3.2007 which came up for consideration on 6.3.2007 and time was allowed to file counter. Again on their MA No. 233 of 2007 filed on 22.3.2007 two weeks time was granted to the Respondents by order dated 22.03.2007 to file counter. They also filed on 13.5.2007 MA No.214 of 2006 for vacation of the interim order and the Tribunal allowed time to the applicant to file objection and the applicant has already filed objection thereto. Thereafter the matter was listed on 10.4.2007, 18.4.2007, 24.4.2007 and 14.5.2007 for considering the MA No. 214 of 2007 filed by the Respondents for vacation of the interim order of stay. On 22.5.2007 we heard the learned counsel for the parties on MA No. 214 of 2007 and reserved the orders.

3. After going through the records we found that the O.A. has not yet been admitted which we do hereby on hearing the parties. It is seen that the respondents have filed their counter to the O.A. on 17.5.2007 with the Registry as submitted by the Respondents' S.C.G.S.C. who has also served a copy thereof in the open Court on 22.5.2007 on the learned counsel for the applicant who desired to file rejoinder. On 13.5.2007 the Respondents have filed MA No.214 of 2007 for vacation of the interim order of stay. The applicant has filed his objection thereto. Considering the nature of grievance of the applicant and the points raised by him in the O.A. itself we think it fit and proper to finally dispose of the O.A. itself, although we had reserved the orders on MA No. 214 of 2007 on 22.5.2007 and contemplated adjourning the O.A.

4. The indisputable facts of the case are that in the year 1997, the applicant was initially posted at Aizawl, Mizoram as Wireless Operator, which is a difficult station. In the year 2000, he was posted to Bhubaneswar on transfer. While so posted, he was sent on training to New Delhi during the period from 19.1.2001 to 20.7.2001 and subsequent thereto for two months temporary duty he was posted to —————→



Jammu & Kashmir, six months training at New Delhi from 19.7.2004 to 14.1.2005 and to Raipur and Chhatishgarh on temporary transfer under Annexure A/2 dated 27.10.2006. While the matter stood thus, vide order dated 8.1.2007 (Annexure 4) he has been transferred to Raipur.

5. The grounds urged by the applicant in support of his grievance are that although at the initial stage he was posted to Mizoram in 1997, which is a difficult station, but subsequent to his transfer to Bhubaneswar in the year 2000, he complied with the orders passed by the Respondents from time to time posting him out of Bhubaneswar on training, temporary duties, etc., between 2001 and 2006, whereafter he has been subject to transfer under Annexure 4, dated 8.1.2007. It is the further contention of the applicant that without taking into consideration his representations dated 2.1.2007 under Annexure-3, the Respondents should not have issued the orders of transfer. The applicant has also emphatically submitted that vide Annexure/8 dated 4.11.2006 Respondent No.2 made it clear that there might not be general transfer and that the required staff for four new ISPW stations including Raipur would be picked up as per station seniority basis which includes difficult station also from those who have completed the prescribed tenure. Lastly, it is the case of the applicant that although there are many eligible and willing persons to be posted at Raipur, there was no justifiable reason to transfer him, besides submitting his problems on the domestic grounds.

6. In course of hearing, the learned counsel for the applicant, apart from making his submissions as stated above, drew our attention to Annexure 8, dated 4.11.2006 and submitted that the options received from Wireless Operators staff were encouraging and therefore, without considering the options exercised by the personnel of the applicant's category to come to Raipur, the action of the Respondents in transferring the applicant to Raipur cannot be said to be a judicious decision, particularly when the applicant after coming to Bhubaneswar 2000 on many a occasions has been subjected to training, temporary posting etc., outside Bhubaneswar including the difficult station between 2001 and 2006.



7. On the other hand, the Respondents have urged the points of administrative need and the scope of the Tribunal to interfere in the matter of transfer as their triumph card. Besides, they have stated that since the applicant had already joined at Raipur, the present transfer is a regular one only to adjust him there and in consequence thereof, the applicant is required to be regularly relieved after handing over the charge formally.

8. We have considered the rival submissions made at the Bar. What the Respondents have submitted both in objection to the interim order and MA No.214 of 2007 for vacation of stay is one and the same in two different directions. We also find that the Respondents have not denied any of the facts set out by the applicant in the O.A. and thus, the facts remain incontrovertible.

9. The sole point which concentrates our minds, as referred to above, is that if at all the options exercised by the personnel of the applicant's category, i.e., Wireless Operator, to come to Raipur and other stations, as set out in Annexure 8 were encouraging, what prompted the Respondents to transfer the applicant to Raipur, notwithstanding the fact that his representation dated 2.1.2007 (Annexure 3) before the impugned order of transfer vide Annexure 4 could be issued was at the disposal of the Respondents. The Tribunal is very much conscious with regard to its jurisdiction while dealing with the matters relating to transfer, but at the same time the facts clash between inclination and disinclination of the incumbents to come to Raipur cannot be lost sight of, which in our considered view would have an aptness of things, had the applicant's representation under Annexure 3 and the persons willing to come to Raipur been taken into consideration together and a decision wholesome taken.

10. Having regard to what has been discussed above, we direct the Respondents to consider the representation of the applicant vide Annexure 3 and successive representations made after issuance of the order of transfer under Annexure 4 in the light of the observations made in the preceding paragraphs and pass a reasoned and speaking order within a period of 90 (ninety) days from the date of receipt of copy of this order. Until a decision is taken and communicated by the Respondents to the applicant, the applicant shall be allowed to continue at

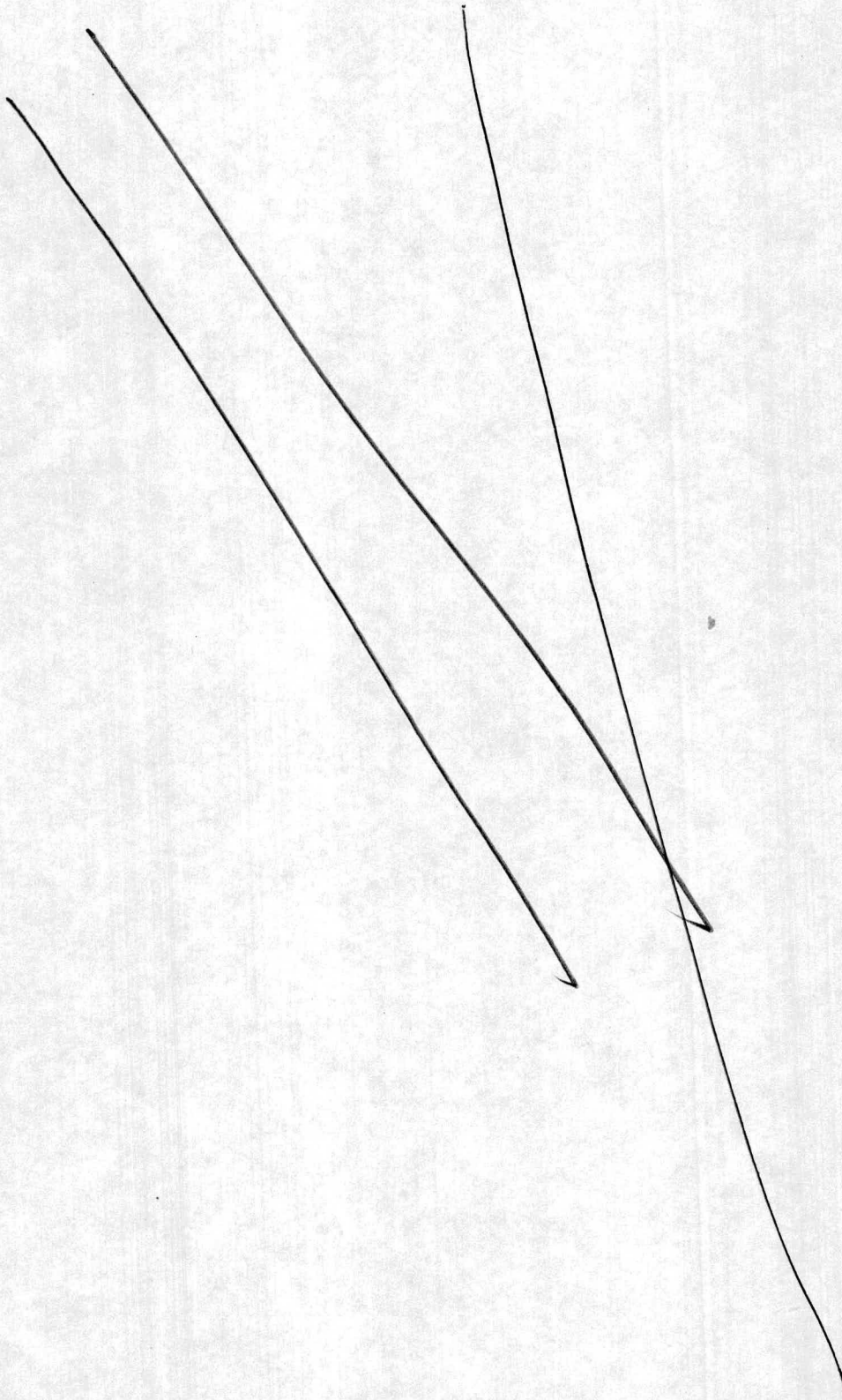


Bhubaneswar. Under the circumstances of this final order passed in the O.A., the Respondents' MA is eclipsed and consequently becomes infructuous.

11. In the result, the O.A.No.62 of 2007 and MA No.214 of 2007 are disposed of accordingly as above. No costs.

(B.B.MISHRA)
ADMINISTRATIVE MEMBER


(N.D.RAGHAVAN)
VICE-CHAIRMAN



O.A. No. 62 OF 2007

Prashanta Kumar Pradhan Applicant
Versus
Union of India & Ors. Respondents

Order dated: _____.

PER-Mr.B.B.Mishra, Mmebr(Admn.).

I have carefully gone through the pre-delivery orders of
Learned brother Hon'ble Vice-Chairman placed today.

2. In this Original Application, the Applicant prays for the
following relief:

- “(i) This Tribunal be graciously pleased to allow the application and quash the order dated 8th January, 2007 (Annexure-4);
- (ii) This Tribunal be graciously pleased to allow the application and give a direction to the Respondents for allowing the applicant to stay in his present station i.e. ISPW station, Bhubaneswar;
- (iii) And to pass any other appropriate direction/order as this Hon'ble Tribunal deems fit and proper to which the applicant is entitled to.”

3. Applicant in his OA has stated that representations under Annexure 5 & 6 have not yet been disposed of. These representations were submitted by the Applicant after his order of transfer under Annexure-4, praying therein not to disturb him from his place of posting since he is looking after his baby child and old ailing mother. Also he has pleaded that his wife is serving at Cuttack and according to Government both husband and wife need to be accommodated at same place of

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posting. According to him, Respondents have very frequently, sent him out of the Orissa for training and temporary duty.

4. According to the Respondent-Department the Applicant joined service in the year 1997 and from 2000 onwards he is at Bhubaneswar. His wife is an employee working in the Hon'ble High Court of Orissa. The Applicant because of his station seniority and need of his service in public interest at Raipur, was transferred and posted to Raipur. In paragraph 7 of the counter filed on 17th May, 2007 the Respondents have specifically stated as under:

“.....It is relevant to mention that the applicant has never requested or claimed deferment of his transfer on the basis of his wife's service at Bhubaneswar in any of the representation submitted by him before his transfer. The representations mentioned at Annexure – 5 & 6 are submitted only after his transfer and it was an afterthought to find the justification for his claim. However, these representations were also considered but could not be acceded due to administrative constraints. As such the transfer order is not at all violation of any transfer policy as claimed by the applicant but it was very well under public interest.”

(emphasis supplied)

5. Neither this has been refuted by the Applicant by filing any rejoinder nor has he questioned the manner of disposal during course of hearing.

6. Having heard Learned Counsel for both sides, it is seen that as regards the plea of frequent transfers/deployment elsewhere, the

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Respondents have enclosed copies of the letter of willingness given by Applicant himself. Having done so, it is not wise on the part of the Applicant to allege before this Tribunal that he was frequently being sent out of Orissa on training/temporary duty.

7. The averment of the applicant that many other employees in the category of Wireless Operator exercised their option to come to Raipur stations is of no help in deciding the present issue; because neither the applicant disclosed who are those employees exercised option to go to Raipur nor are they before us. Also this was not one of the grounds of challenge of the order of transfer. Therefore, in absence of these, no cognizance can be taken on the inclination of other personnel to go to Raipur.

8. It is a settled law that Government is the sole authority to decide who should go where and the Courts/Tribunal should not ordinarily interfere with the orders of transfer unless the same is made in violation of statutory Rules/unless *mala fide* is alleged and established. There is no material to establish that any of the statutory Rules has been violated by the Respondent-Department in passing the order of transfer. Also, not to speak of establishing even there is no allegation of *mala fide*.

9. Paragraph 9 of the order of my Learned brother Hon'ble Vice-Chairman reads as under:

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“9.The Tribunal is very much conscious with regard to its jurisdiction while dealing with the matters relating to transfer, but at the same time the facts clash between inclination and disinclination of the incumbents to come to Raipur cannot be lost sight of, which in our considered view would have an aptness of things, had the applicant's representation under Anneure-3 and the persons willing to come to Raipur been taken into consideration together and a decision wholesome taken.”

10. Applicant submitted representation under Annexure-3 dated 02.01.2007 stating that in case he is disturbed from Bhubaneswar this would cause dislocation of his mother's treatment. The order of transfer is dated 08.01.2007. Therefore, it cannot be presumed that the respondents did not pay any attention while passing the order of transfer to the representation of applicant and the options of other persons to come to Raipur which is not the subject matter in this OA. Non-consideration of option exercised by employees to go to a particular place cannot be a ground to interfere in the order of transfer of an employee made in public interest. The Hon'ble Supreme Court in the case of **State of UP v. Gobardhan Lal**, 2005 SCC (L&S) 55 have deprecated of making sweeping observations on the basis of its own assessment and laying down general guidelines regarding transfer.

11. Time and again, the Hon'ble Supreme Court have held that the Courts/Tribunal should not interfere in the order of transfer made in public interest and instead of burdening this judgment by referring to all

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of the decisions some of the important decisions in this aspect are cited below.

1. **Mrs. Shilpi Bose and Others v. State of Bihar and Others -** AIR 1991 SC 532;
2. **Union of India v. N.P.Thomas-AIR 1993 SC 1605;**
3. **Union of India v. S.L.Abas -AIR 1993 SC 2444;**
4. **State of Madhya Pradesh v. Shri Arjun Sing - AIR 1993 SC 1239 ;**
5. **Abani Kanta Ray v. State of Orissa - 1995 (Suppl.) 4 SCC 169;.**
6. **Union of India and Others v. V.Janardan Debanath and Another - (2004)4 SCC 245;**
7. **National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574;**
8. **Union of India v. H.N.Kirtania - (1989 (3) SCC 445);**
9. **State of Orissa v. Kishore Chandra Samal- 1992 (2) Scale page-251;**
10. **State of Madhya Pradesh v. S.S.Kourav- AIR 1995 SC 1056;**
11. **State of UP and Others v. Gobardhan Lal and D.B.SINGH v. D.K.Shukla and Others -2005 SCC (L&S)55;**
12. **State of U.P. & Ors. v Siva Ram & Anr.-2005(1) AISLJ 54.**

12. In view of the facts and law stated above, there is no ground to interfere in the order of transfer and consequently, this OA deserves to be dismissed. Accordingly, stay order passed on 21-02.2007 needs to be vacated.


13. In view of the OA MA filed by the Respondents seeking vacation of the stay order dated 21.02.2007 becomes infructuous.

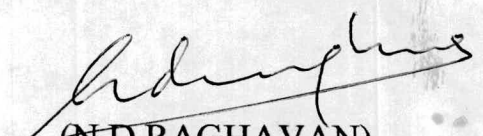
BB. Mishra
(BB. MISHRA)
MEMBER (A)

O.A.No. 62 of 2007

While referring this case to the Hon'ble Chairman under Section 26 of the A.T.Act, 1985, for resolving the points of difference, the following questions are framed:

- a) Whether, or not, on the facts and in the circumstances of the case, the Tribunal can be swayed away by the bald assertion made by the Respondents that the applicant's representations vide Annexures-A/5 dated 9.1.2007 and A/6 dated 24.1.2007 have been considered, but could not be acceded due to administrative constraints, without any corroborative materials being annexed to the counter ?
- b) Whether, or not, on the facts and in the circumstances of the case, the proposed order of the Vice-Chairman amounts to interference - and if so, unjust - with the impugned transfer order ?
- c) Whether, or not, on the facts and in the circumstances of any case including ~~of~~ this, any case law, not cited by either or both the parties in the course of a judicial proceeding, could be taken in aid and assistance to base its conclusion to be arrived at while adjudicating an issue and moreso without discussing the facts of those cases and in the instant case, as done by the dissenting order at paragraph 11, inter alia, citing merely plethora of case laws enumerating a dozen therein, as it amounts to deprivation of opportunity to the aggrieved of being heard, thus resulting in violation of principles of natural justice - Audi alteram partem a sine qua non of the basics of jurisprudence ?


(B.B.MISHRA)
ADMINISTRATIVE MEMBER


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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O.A.No. 62/2007

ORDER DATED: 20.09.2007

While passing final orders in this case, the following question were framed by the constituents of the Division Bench of this Tribunal, as their decisions were divergent:-

“ a) Whether, or not, on the facts and in the circumstances of the case, the Tribunal can be swayed away by the bald assertion made by the Respondents that the applicant's representations vide Annexures-A/5 dated 9.1.2007 and A/6 dated 24.1.2007 have been considered, but could not be acceded due to administrative constraints, without any corroborative materials being annexed to the counter ?

b) Whether, or not, on the facts and in the circumstances of the case, the proposed order of the Vice-Chairman amounts to interference- and if so, unjust – with the impugned transfer order ?

c) Whether, or not, on the facts and in the circumstances of any case including this, any case law, not cited by either or both the parties in the course of a judicial proceeding, could be taken in aid and assistance to base its conclusion to be arrived at while adjudicating an issue and more so without discussing the facts of those cases and in the instant case, as done by the dissenting order at paragraph 11, inter alia, citing merely plethora of case laws enumerating a dozen therein, as it amounts to deprivation of

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opportunity to the aggrieved of being heard, thus resulting in violation of principles of natural justice- Audi alteram partem a sine quo non of the basics of jurisprudence ?”

2. Briefly stated, the facts of the case are as under:-

(a) The applicant is serving as Wireless Operator and is functioning since June, 2000 at the Inter-State Police Wireless Station, Bhubaneswar. For updating his knowledge and to be familiar with the ever advancing communication technology, the applicant was sent on training ranging from two months to 6 months at various centers. Recently, by the impugned order dated 8.1.2007, the applicant has been posted from Bhubaneswar to Raipur. Immediately on receipt of the same, the applicant has moved a representation dated 24.1.2007 stating that his wife is serving in Orissa High Court that he has a baby of a few months old; that his septuagenarian mother is suffering from mental disorder and undergoing treatment at Cuttack/Bhubaneswar; that there is no other male member in his family to help at the time of medical check up. Accordingly, the applicant has requested for

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retention at Bhubaneswar for the time being at least one year at ISPW, Bhubaneswar.


3. Vide Annexure-7, wireless communication dated 2.2.2007, the authorities have rejected the request of the applicant for retention at Bhubaneswar, for administrative reasons. The applicant has filed this O.A. praying for quashing of the impugned order dated 8.1.2007 in so far as it relates to the applicant.

4. Respondents have contested the O.A. They have stated that Raipur is a unit recently set up and in order to man the same adequate number of personnel are required. Earlier, vide fax message dated 3.11.2006, Respondents in their inter-departmental communication have stated that there was encouraging response from Wireless Operators and Radio Technician staff for moving skeleton staff strength to Raipur. The Respondents in their Counter have contended that the applicant's transfer is on public interest and is required under administrative exigencies. The fact that provision exists for accommodating in the same station when the

spouse is also employed is normally applicable for all India service cadre and not to others. Again, in the instant case, applicant's wife is serving at Cuttack High Court and if his request is considered he cannot be transferred for all times to come. Vide Annexure-R/7 series, the applicant has been making a request to accommodate him since the time he had completed his tenure at Bhubaneswar and he has been renewing his request for retention almost annually.

5. Though the applicant was desirous to file rejoinder as the case was to be heard, in view of stay order operating in his favour, the case was finally heard without rejoinder. The Hon'ble Vice-Chairman in para 9 to 11 has held as under:-

"9. The sole point which concentrates our minds, as referred to above, is that if at all the options exercised by the personnel of the applicant's category, i.e., Wireless Operator, to come to Raipur and other stations, as set out in Annexure-8 were encouraging, what prompted the Respondents to transfer the applicant to Raipur, notwithstanding the fact that his representation dated 2.1.2007 (Annexure-3) before the impugned order of transfer vide Annexure 4 could be issued was at the disposal of the Respondents. The Tribunal is very much conscious with regard to its

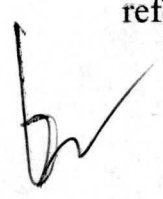


jurisdiction while dealing with the matters relating to transfer, but at the same time the facts clash between inclination and disinclination of the incumbents to come to Raipur cannot be lost sight of, which in our considered view would have an optness of things, had the applicant's representation under Annexure-3 and the persons willing to come to Raipur been taken into consideration together and a decision wholesome taken.

10. Having regard to what has been discussed above, we direct the Respondents to consider the representation of the applicant vide Annexure-3 and successive representations made after issuance of the order of transfer under Annexure-4 in the light of the observations made in the preceding paragraphs and pass a reasoned and speaking order within a period of 90 (ninety) days from the date of receipt of copy of this order. Until a decision is taken and communicated by the Respondents to the applicant, the applicant shall be allowed to continue at Bhubaneswar. Under the circumstances of this final order passed in the O.A., the Respondents' MA is eclipsed and consequently becomes infructuous.

11. In the result, the O.A.No. 62 of 2007 and MA No. 214 of 2007 are disposed of accordingly as above, No costs."


6. However, the Hon'ble Administrative Member after referring to a number of decisions held as under:-



“10. Applicant submitted representation under Annexure-3 dated 02.01.2007 stating that in case he is disturbed from Bhubaneswar this would cause dislocation of his mother's treatment. The order of transfer is dated 8.1.2007. Therefore, it cannot be presumed that the respondents did not pay any attention while passing the order of transfer to the representation of applicant and the options of other persons to come to Raipur which is not the subject matter in this O.A. Non-consideration of option exercised by employees to go to a particular place cannot be a ground to interfere in the order of transfer of an employee made in public interest. The Hon'ble Supreme Court in the case of State of UP v. Gobardhan Lal, 2005 SCC(L&S) 55 have deprecated of making sweeping observations on the basis of its own assessment and laying down general guidelines regarding transfer.

11. Time and again, the Hon'ble Supreme Court have held that the Courts/Tribunal should not interfere in the order of transfer made in public interest and instead of burdening this judgment by referring to all of the decisions some of the important decisions in this aspect are cited below.


1. Mrs. Shilpi Bose and Others v. State of Bihar and Others- AIR 1991 SC532;
2. Union of India v. N.P.Thomas-AIR 1993 SC 1605;
3. Union of India v. S.L.Abas-AIR 1993 SC 2444;
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5. Abani Kanta Ray v State of Orissa- 1995 (Suppl.) 4 SCC 169;

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6. Union of India and Others v V.Janardan Debanath and another- (2004)4 SCC 245;
 7. National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan (2001) 8 SCC 574;
 8. Union of India v H.N. Kirtania- (1989 (3) SCC 445);
 9. State of Orissa v. Kishore Chandra Samal- 1992(2) Scale page-251;
 10. State of Madhya Pradesh v S.S.Kourav- AIR 1995 SC 1056;
 11. State of UP and others v. Gobardhan Lal and D.B.Singh v D.K.Shukla and others-2005 SCC(L&S)55;
 12. State of UP & Ors. v Siva Ram & Anr.- 2005(1) AISLJ 54.

12. In view of the facts and law stated above, there is no ground to interfere in the order of transfer and consequently, this OA deserves to be dismissed. Accordingly, stay order passed on 21.2.2007 needs to be vacated."


7. It is under the above circumstances that the matter has been referred to the third Member.

8. Counsel for the applicant submitted that the documents filed by the Respondents do not clearly specify that each and every ground as contained in his representation vide Annexure-A/5 was considered before rejecting his request. It is on account of this reason that the Hon'ble Vice-Chairman has




suggested that the case should be reconsidered by the Respondents. The Counsel for the Applicant further submitted that normally unless such representations are considered and decided on merit, the transfer order should not be given effect to.

8. Counsel for the Respondents, however, submitted that transfer being an incidence of service and the applicant being liable for all India transfer, such a transfer in the Respondents organization is a periodical intervals and in the instance case, it is with a view to manning ISPW at Raipur that such transfers have been effected. He has also contended that scope of judicial review of transfer order is limited. That the applicant has been making periodical representations for retention, has also been highlighted by the Counsel for the Respondents. Apart from this, as to the decisions by the Apex Court and the other Court as contained in the counter, the counsel for the Respondents has referred to the latest judgment dated 18.5.2007 of the Hon'ble High Court of Orissa at Cuttack (Saudamini Mishra vs State of Orissa) reported in Cuttack Law Times, Vol.-104, Part-4 page- 229.



9. Arguments were heard and documents perused. In so far as first reference is concerned it is to be held that there does not appear any conspicuous proof which would go to show that all the points raised in the representation vide Annexure-A/5 were considered in their proper perspective. As such, notwithstanding the fact that the counter was duly verified and it also contained an averment that the request of the applicant has been considered, it has to be held that the consideration does not appear to be with due application of mind.

10. As regards (c), it is trite knowledge that the function of the Tribunal is to dispense justice. For this purpose, the assistance of the Bar is sought. The Counsel for the contesting parties go on adding more and more decisions to substantiate their points and ultimately, as said Lord Denning in *Jones v. National Coal Board* (1957) 2 QB 55 "let the advocates one after the other put the weights into the scales — the 'nicely calculated less or more' — but the judge at the end decides which way the balance tilts, be it ever so slightly. This is so in every case and every



situation.” However, if vital decisions which are directly applicable to the facts of the case of omitted to be recorded by the Bar, there cannot be any impediment in referring to such relevant decisions by the Bench. The Apex Court in the case of *All India Judges' Assn. v. Union of India, (1992) 1 SCC 119*, popularly known as “the Judges cases” held as under:-

“Unlike the administrative officer, the judicial officer is obliged to work for long hours at home. When he reserves a judgment he has usually to prepare the same at his residence. For that purpose, he has to read the records as also the judicial precedents cited by counsel for the adversaries. Even otherwise with a view to keeping himself up to date about the legal position he has to read judgments of his own High Court, other High Courts and of the Supreme Court. He has also to read legal journals.

Obviously, the need to update the knowledge on legal position as stated above, is to make use of the same in their own judgments, and thus, it is not only useful to refer to such judgments/orders not cited by the parties, but in a way essential too in rendering complete justice.

12. In so far as question at 1(b) above, I am in full agreement with the proposed order of the Hon'ble Vice-Chairman for the reasons below:-

(a) the Applicant has given a few reasons in support of his request for retention, one of them is that he has an aged mother, who is suffering from mental disorder. Even though, medical facilities may be available at the new duty station, for the septuagenarian lady, to acclimatize with the entirely new surrounding, it may be difficult. New atmosphere, new neighbours, new medical experts, everything would be new! Language would be serious hurdle in communication. These are the matters to be considered with a sense of human touch. Frequent transfers are avoided keeping in view the convenience of the family. Mere official requirement alone is not seen. This does not however mean that service exigencies will take a rear seat in comparison with personal conveniences. If the fax message of November, 2006 were to be taken in to account, there does not appear to be much difficulty for posting any other Wireless Operator, as, even as per the Respondents, the response from Wireless Operators and Technicians to get posted at Raipur has been highly encouraging

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(b) the next reason given is that the applicant has an infant child, here again, both the mother and the child may need adequate rest and medical facilities and it would be inconvenient

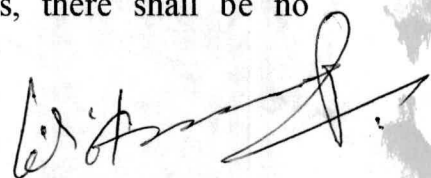
to shift an infant child to a new station (of course by now the child is not that infant)

(c) the third reason given is that the applicant's wife is an employee of the High Court. Vide order dated 12th June, 1997 passed by the Nodal Ministry, where husband and wife are employed in Govt. service (including State Govt. service or Public Sector Undertakings) attempt should be made to invariably post the two in the same station. Of course, this facility is to ensure that the child education is not unduly hampered. It is not exactly known whether the applicant has any school going child at the moment. Nevertheless the request of the applicant requires a liberal consideration at the hands of the Respondents. Lastly, the applicant's request is purely for accommodation by one year and that one year is likely to come to an end by the beginning of the next year, 2008. As such, the applicant can well be considered for transfer in the next rotational transfer. For this purpose undertaking may be obtained from the applicant that he shall not resort to making any more request for retention. This precaution is taken as the applicant has been renewing such a request on annual basis at least from 2005.

13. In view of the above, concurring with the opinion of the Hon'ble Vice-Chairman, this **O.A. is disposed of** with the direction to the Respondents to duly and **judiciously consider the representation vide Annexure-A/5 in the light and the**

observations made by Hon'ble Vice-Chairman in its order dated 28.06.2007 in para 5 to 9 and para 12 of this order (above) and if satisfied that the applicant's case requires accommodation at Bhubaneswar for the time being, necessary orders be passed accordingly. In case, the authorities feel that service exigencies want some one to be posted at Raipur immediately and none from the volunteers is available and hence the request of the applicant cannot be acceded to, then a reasoned and speaking order meeting all the grounds raised by the applicant for retention be given. In such event, the applicant shall not be disturbed for a period of four weeks from the date of communication of the decision so as to enable him to make preparation for the same,

14. Under the above circumstances, there shall be no order as to costs.



(DR.K.B.S.RAJAN)
MEMBER(JUDL.)